

INTEROFFICE MEMORANDUM

DATE: June 8, 2012 **PHONE:** (760) 243-8600

FROM: Donna Kauffman, DDA
Victorville Office

TO: Dennis Christy, Assistant Deputy District Attorney
Gary Roth, Chief Deputy District Attorney



SUBJECT: Non-Fatal Officer Involved Shooting

Officers Involved: Deputy Jeffery Farrar
Deputy Lisa Guerra
Deputy Bela Lukacs
Deputy Gerardo Moreno
Deputy Jeremy Vasquez
All are San Bernardino County Sheriff's Deputies

Injured Party: Robert Marquez (DOB 7/29/84)
8258 Sherborn Avenue, Hesperia, Ca. 92345

Incident Date: October 6, 2011, 18:16 hours

Case Agent: Detective Matthew Peterson, SBSD/Special
Investigations; DR# 191107598
STAR# 2011-00-0051796

Location of Incident: 18170 Eucalyptus Street, Hesperia, Ca. 92345

Summary

The following statement of facts is derived from interviews of the involved parties, belt recordings, call logs, photographs and other information and evidence as gathered by the San Bernardino County Sheriff's Specialized Investigation Division, Homicide Unit, during the course of their investigation.

On October 6, 2011 Robert Marquez robbed the Shop-in-Go 76 Station located at 11254 Avenue I in the city of Hesperia. Marquez entered the store with a loaded handgun and is seen on surveillance firing a round from a firearm. San Bernardino

County Sheriff's Dispatch received two phone calls reporting the armed robbery at the Shop-n-Go 76 Station. One of the reporting parties, John G., described the suspect as wearing blue jeans, a green beanie hat, and sunglasses. He also told dispatch that the suspect had fired a single shot from a handgun while in the store and then fled into the fields near the location. Deputies were dispatched to the area and, with the help of Sheriff's Aviation, began conducting searches of vacant homes and backyards in an attempt locate the suspect.

On the ground, deputies continued their search through vacant areas and backyards, talking to residents in the neighborhood, while the Sheriff's helicopter used the forward looking infrared (FLIR) to assist in the search. Robert Marquez attempted to hide from the deputies by lying on the ground, hidden by the darkness. Deputy David Carney was aboard the Sheriff's helicopter and was operating the FLIR and conducting the search from the air. Using the FLIR, Deputy Carney located a large heat signature consistent with a human form lying on the ground near an abandoned shed. Deputy Carney directed the deputies on the ground to the location. Deputies Guerra, Vasquez, Lukacs, Moreno and Farrar approached the shed from separate directions. As they approached, Marquez began to run. Deputy Farrar, who had seen the surveillance video from the Stop-n-Go 76 station, immediately identified the individual as the suspect from the armed robbery.

According to witness Nicola W. and Deputy Moreno's belt recording, as the deputies began to approach the suspect they gave several verbal commands for the suspect to "get down". Marquez did not comply with the command and fled toward a chain link fence dividing two residential properties. When Marquez reached the fence he fired one round from a semi-automatic handgun at the deputies. Deputies Guerra, Lukacs, Vasquez, Moreno and Farrar returned fire. Marquez continued to flee from the deputies, running in between a detached garage and a motorhome, putting him in a position of advantage over the deputies. Fearing for their safety, the safety of the citizens in the neighborhood, and knowing that the suspect had a loaded firearm, deputies continued to return fire.

Eventually, deputies were able to make their way to the suspect hidden between the garage and motorhome. Deputies continued to give verbal commands to Marquez to show his hands but the suspect did not comply. Deputy Lukacs positioned himself on top of Marquez in an attempt to handcuff but Marquez continued to be uncooperative and was attempting to get up from the ground. Deputies gained physical control of Marquez and he was handcuffed.

After Marquez was detained, deputies did a brief search of the area. Deputies located a small silver and black .380 caliber handgun with the hammer cocked. Also collected as evidence was the defendant's clothing, matching the description previously given by John G. of the armed robbery suspect, and one thousand ninety dollars that was in the suspect's pockets.

Robert Marquez is currently charged in case number FVI1102363 with the following Penal Code violations: 1) 211, Robbery; 2) 245(a)(2) Assault with a Firearm; 3) 69, Resisting an Executive Officer; 4) 246.3, Discharging a Firearm with Gross Negligence; 5) 12021(a)(1), Felon in Possession of a Firearm; 6) 12031(a)(2)(c), Carrying a Loaded Firearm by a Gang Member; 7) 12316(b)(1), Possession of Ammunition by a Felon; 8) 186.22(a), Street Terrorism. It is further charged that the above crimes were committed for the benefit of, at the direction of, or in association with a criminal street gang in violation of Penal Code Section 186.22(b)(1).

Other Relevant Information

Marquez was transported to Arrowhead Regional Medical Center. He was treated for three gunshot wounds, one to the right thigh, one to the left ankle, and one to the back.

Twenty six expended shell casings were recovered from the scene, twenty five .45 caliber and one .380 auto. Each of the Deputies was carrying .45 caliber handguns. Also recovered at the scene were eleven fired bullet fragments and three fired bullets.

Other relevant evidence collected included a green "New Era 59fifty" baseball hat, two gray fabric gloves, dark tinted sunglass lens, black plastic "Locs" sunglasses with a missing lens, "Coogi" blue jeans, and one thousand ninety dollars.

Marquez has been identified as a member of Born Krazy Minded, a criminal street gang as defined in Penal Code Section 186.22. Marquez has been identified in four separate gang cards on four different occasions (5/19/2008, 6/10/2008, 10/2/2009, 4/9/2010) each time admitting to being a member of "Born Krazy Minded" criminal street gang. Marquez also has tattoos consistent with gang membership.

Applicable Legal Standards

Self-Defense / Defense of Others Against Assault

It is lawful to use force against another person if a person reasonably believes that there was imminent danger of bodily injury to himself or someone else. The person must reasonably believe that the immediate use of force was necessary to defend against that danger. That person is only entitled to use that amount of force that a reasonable person would believe is necessary in the same situation.

In deciding whether the person's beliefs were reasonable, all the circumstances as they were known to and appeared to that person should be considered as well as what a reasonable person in a similar situation with similar knowledge would have believed. If the person's beliefs were reasonable, the danger does not need to have actually existed.

CALCRIM 3470

Self-Defense / Assailed Person Need Not Retreat

An assailed person is not required to retreat. He is entitled to stand his ground and defend himself and, if reasonably necessary, to pursue an assailant until the danger of bodily injury has passed. This is so even if safety could have been achieved by retreating.

CALCRIM 3470

Self-Defense / Actual Danger Not Necessary

The person's belief that he or someone else was threatened may be reasonable even if he relied on information that was not true. However, the person must actually and reasonably have believed that the information was true.

CALCRIM 3470

Analysis

Deputies Farrar, Guerra, Lukacs, Moreno, and Vasquez did not fire their weapons until Mr. Marquez had exhibited unwillingness to comply with commands, and had in fact fired one round toward the deputies, clearly representing an imminent threat of serious bodily injury or death to the deputies and others. The deputies repeatedly attempted to stop Mr. Marquez by giving him verbal commands. However, Marquez refused to comply and fired his weapon. Even after firing his weapon, Marquez continued to try to evade deputies by running in and out of areas where the deputies maintain visual contact with him and not complying with verbal commands. Deputies were aware that Marquez had already fired one round from his gun at the Stop-n-Go 76 station and knew that they were in a residential area. When deputies fired their weapons they were acting in self-defense, as Marquez had first fired a round from his firearm and the deputies believed that returning fire was necessary to defend against the danger presented by Marquez. Further, the deputies were acting in defense of others. Their actions were necessary to protect their fellow deputies and the individuals that resided in the area. Their right to act as they did in self-defense and defense of others is corroborated by independent witnesses and the evidence.

Conclusion

The shooting by Deputy Jeffery Farrar, Deputy Lisa Guerra, Deputy Bela Lukacs, Deputy Gerardo Moreno, and Deputy Jeremy Vasquez, was justified in self-defense and in defense of others, and no criminal liability results therefrom.

Donna S. Kauffman, DDA
Victorville Office

Date

Gary Roth, CDDA
Victorville Office

Date

Dennis Christy, ADA
Criminal Operations

Date